



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
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May 24, 2022

Russell Creighton
Treasurer, Lamorinda Democratic Club
31 Orinda View Rd
Orinda, CA 94563

Re: Your Request for Advice
Our File No. I-22-030

Dear Mr. Creighton:

This letter responds to your request for advice regarding the campaign provisions of the Political Reform Act (the “Act”).¹

Please note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice. Also, as you have asked questions regarding the general application of the campaign provisions of the Act, we must limit our response to informal assistance.²

QUESTION

Do the actions of the Lamorinda Democratic Club qualify it as a committee subject to registration and reporting under the Act?

CONCLUSION

The actions of the Lamorinda Democratic Club you have described, including endorsing candidates, distributing communications containing express advocacy, and conducting partisan get-out-the-vote efforts will qualify the Club as an independent expenditure or recipient committee subject to registration and reporting should it meet the requisite monetary thresholds as established by the Act. Should the Club make independent expenditures of \$1,000 or more in a calendar year, or receive contributions of more than \$2,000 in a calendar year, it will qualify as a committee.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18104 through 18998 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² Informal assistance does not provide the requestor with the immunity provided by an Opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

FACTS AS PRESENTED BY REQUESTER

You serve as the Treasurer of the Lamorinda Democratic Club (hereafter “LDC”). The LDC plans and hosts various events throughout the year, including a trivia night, and participates in a local art and wine festival, as well as a local 4th of July parade.

Additionally, the LDC works to get-out-the-vote (also referred to as “GOTV”) among Democrats each election cycle. Including producing flyers with precinct-specific voting information such as: important election dates, early voting locations, drop-box locations, in-person voting locations and times, and the names of all Democratic candidates who will be appearing on a voter’s ballot. If the LDC has endorsed candidates, it will usually identify such candidates with an asterisk or other symbol on the flyers produced. In a follow-up email, you provided a copy of a flyer and a mail piece produced by the LDC.

The LDC is a chartered club of the Democratic Party of Contra Costa County. Its revenue comes primarily from LDC member annual dues and from general LDC member donations. LDC expenditures include rental of event space for meetings and social events; participation fees for festivals and parades; communications expenses such as Zoom and MailChimp; party supplies and catering; printing, stamps, and paper supplies for member mailings and for Democratic voter outreach.

The LDC does not pay any of its members or volunteers to participate in any voter-outreach activities. The LDC also does not host fundraisers for candidates, nor coordinate with, or contribute to, candidates or their campaigns. Voter-outreach measures undertaken by the LDC are not done on behalf of specific individual candidates or campaigns. Finally, the LDC does not make contributions to political action committees or other political activist groups.

ANALYSIS

Under the Act, a “committee” is defined as any person or combination of persons who: a) receive contributions totaling \$2,000 or more in a calendar year for political activities; b) make independent expenditures totaling \$1,000 or more in a calendar year; or c) make contributions totaling \$10,000 or more in a calendar year. (Section 82013.) To the extent contributions received, or independent expenditures made exceed the thresholds qualifying the LDC as a committee under Section 82013, the LDC must file a statement of organization and periodic campaign reports as required by the Act.

An individual or entity that makes one or more independent expenditures to pay for a communication (e.g., mailing, lawn sign, newspaper ad, etc.) totaling \$1,000 or more in a calendar year that is not coordinated with the affected candidate or committee qualifies as a committee and must file reports under the Act. (Section 82013(b).) An “independent expenditure” is a payment for

a communication that, in part, expressly advocates³ the election or defeat of a clearly identified⁴ state or local candidate, and the communication is not coordinated⁵ with or “made at the behest”⁶ of the affected candidate or committee. (Section 82031.)

From the sample mail piece provided, it appears the communication contains express advocacy, as it specifically lists candidates for state and local office endorsed by the LDC (and also notates those endorsed by the California Democratic Party) and specifies that this is the recipient’s “Guide to Voting Blue.” You have indicated that the LDC does not work directly with candidates and that none of its voter outreach measures are done in coordination with, or on behalf of, specific candidates or campaigns. As such, this communication constitutes an independent expenditure and would qualify the LDC as a committee should it expend \$1,000 or more in a calendar year on qualifying activities and communications.

An independent expenditure committee, however, is one which uses only *its own funds* to make independent expenditures. A recipient committee, on the other hand, *receives* contributions of \$2,000 or more in a calendar year. (Section 82013(a).) A “contribution” is “any payment made for political purposes for which a donor does not receive full and adequate consideration.” (Regulation 18215(a); also see Section 82015.) A payment is made for political purposes if it is made “for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any measure,” or is received by or made at the behest of a candidate, controlled committee, an official committee of a political party, or an organization formed primarily for political purposes. (Regulation 18215(a)(1) and (2).)

The facts provided state that the LDC raises funds primarily through LDC member annual dues, as well as general member donations. These funds are used to facilitate the LDC’s primary purpose of supporting Democratic candidates through holding events, providing voting information, distributing partisan get-out-the-vote materials, and publicizing the LDC’s endorsed candidates.⁷

³ “A communication “expressly advocates” the nomination, election, or defeat of a candidate or the qualification, passage, or defeat of a measure if it contains express words of advocacy such as “vote for,” “elect,” “support,” “cast your ballot,” “vote against,” “defeat,” “reject,” “sign petitions for,” or, within 60 days before an election in which the candidate or measure appears on the ballot, the communication otherwise refers to a clearly identified candidate or measure so that the communication, taken as a whole, unambiguously urges a particular result in an election.” (Section 82025(c)(2).)

⁴ “A candidate is clearly identified if the communication states the candidate’s name, makes unambiguous reference to the candidate’s office or status as a candidate, or unambiguously describes the candidate in any manner.” (Section 82025(c)(1)(A).)

⁵ In general terms, “coordination” is where an expenditure is made in cooperation or consultation with the candidate, or the candidate’s agent, for whose benefit the expenditure is made. (Section 85500(b).)

⁶ A payment is “made at the behest” of a candidate or committee if the payment is “made under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of the candidate or committee.” (Regulation 18225.7(a).)

⁷ Please note, payments for communications supporting or opposing candidates to dues paying members of the LDC are not contributions or expenditures so long as the payments are not made for general public advertisements. (Section 85312.)

Therefore, the LDC will qualify as a recipient committee if it has received \$2,000 or more in contributions, as it uses these funds for political purposes such as making independent expenditures on state and local candidates, and conducting partisan get-out-the-vote activities. (See *In re Welsh* (1978); *Craigie* Advice Letter, No. A-89-236 [partisan voter registration and get-out-the-vote activities done independently of a candidate are either expenditures or independent expenditures reportable under the Act].)

To the extent the LDC qualifies as an independent expenditure or recipient committee, we note that all expenditures are required to be reported. This would include the following activities you have identified: partisan get-out-the-vote events and communications, flyers supporting specific candidates, and any mail pieces constituting independent expenditures.⁸

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge
General Counsel

A handwritten signature in blue ink, appearing to read "EM Boyd", is positioned above the typed name of the sender.

By: Erika M. Boyd
Senior Counsel, Legal Division

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⁸ Additionally, “advertisements” supporting or opposing candidates, and paid for by a committee, must contain specified disclosures. (Sections 84501 – 84511.)